(1949) 08 AHC CK 0036

Allahabad High Court

Case No: Criminal Revision No. 613 of 1948

Promod Chandra Shekhar		APPELLANT
	Vs	
Rex		RESPONDENT

Date of Decision: Aug. 1, 1949

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 156, 156(2), 537
- Penal Code, 1860 (IPC) - Section 161, 165
- Prevention of Corruption Act, 1947 - Section 3, 4, 7

Citation: AIR 1951 All 546

Hon'ble Judges: Wanchoo, J; Mootham, J

Bench: Division Bench

Advocate: Shiva Charan Lal, Jagdish Sahai and S.B.L. Gaur, for the Appellant; Jai Kishan Lal brief-holder of Deputy Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Mootham, J.
In view of the order which I propose to make in this case it is unnecessary to state the facts at any length. The applicant was the stenographer of the District Magistrate; of Bulandshahr and it is not in dispute that-he is a public servant. On 19-11-1947, he received from one Fakira two ten-rupee notes-It is the case for the prosecution that he accepted these notes as a gratification other than legal remuneration, in respect of an official act, and thereby committed an offence punishable? u/s 161, Penal Code. The receipt of the notes is admitted by the applicant, but he says that they were received by him in exchange for notes of the same total value, but of smaller denomination, given by him to Fakira.

2. Section 3, Prevention of Corruption Act 1947 II [2] of 1947), provides, inter alia, that an offence punishable u/s 161, Penal Code, shall be deemed to be a cognisable offence for the purposes of the Code of Criminal Procedure. To this section there is a

proviso in the following terms :

"Provided that a police officer below the rank of Deputy Superintendent of Police shall not investigate any such offence without the order of a Magistrate of the First Class or make any arrest therefore without a warrant."

It is not in dispute in this case that the alleged; offence was dealt with as a cognisable offence, and that the investigation was conducted by an officer below the rank of Deputy Superintendent of Police.

3. Section 4, Prevention of Corruption Act, provides, inter alia, that where in any trial for an offence punishable u/s 161, Penal Code, it is proved that an accused person has accepted for himself any gratification (other than legal remuneration) it shall be presumed, unless the contrary is proved, that he accepted that gratification as a motive or reward such as is mentioned in Section 161 of the Code. It is contended by the Crown that this presumption arises as soon as the prosecution has proved that the accused was a public servant and that he accepted a sum of money, whereas the applicant contends that the prosecution must go further and show that the sum of money was accepted as a reward or recompense for something done or to be done.

4. u/s 7, Prevention of Corruption Act, any person charged with an offence punishable, inter alia, u/s 161, Penal Code, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him. The applicant did not give evidence on oath and it is, I understand, not in dispute that the applicant was not informed by the Court of his right to give evidence on oath.

5. I am informed that one or more of the contentions which have been raised by the applicant in this case are common to a number of other appeals or applications in revision pending in this Court and in view of their importance I refer to a Bench or a Full Bench, as his Lordship the Acting Chief Justice shall think proper, the following questions :

(1) What is the effect of non-compliance with the proviso to Section 3, Prevention of Corruption Act, 1947 ?

(2) What is the meaning of the word "gratification" in Section 4 of the said Act, and what has the prosecution to prove before the presumption referred to in that section arises?

(3) What is the effect of the Court not informing the accused that he had a right, if he so wishes, to give evidence on oath in disproof of the charge made against him?

OPINION

Mootham, J.

Three questions have been referred to this Bench for determination. Those questions, together with such facts as are relevant, are set out in the order of reference and need not be repeated.

7. Section 3, Prevention of Corruption Act, 1947 (II [2] of 1947), provides that:

"3. An offence punishable u/s 161 or Section 165, Penal Code, shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure, 1898, notwithstanding anything to the contrary contained therein :

Provided that a police officer below the rank of Deputy Superintendent of Police shall not investigate any such offence without the order of a Magistrate of the first class or make any arrest therefore without warrant."

8. The drafting of this section is not very apt, for the fact that the second clause which is in the form of a proviso suggests that the classification of certain offences as cognisable effected by the first clause is dependent upon the investigation of those offences being conducted in the manner laid down in the second clause. We are, however, satisfied that that was not the intention of the Legislature.

9. Now if Section 3, Prevention of Corruption Act, had done no more than place certain offences in the category of cognizable offences, then the investigation of those offences would have been governed by the provisions of Section 156, Criminal P. C., and could have been conducted (subject to the jurisdictional limits prescribed by that section) by any officer in charge of a police station without the order of a Magistrate. The proviso to Section 3 in so far as it places a restriction on the powers of investigation of police officers below a certain rank, is in effect, therefore, a proviso to Sub-section (1) of Section 156 of the Code and is analogous to the provision in Sub-section (2) of Section 561 of the same Code that no police officer below the rank of police inspector shall be employed or take part in the investigation of the offence specified in Sub-section (1) of the section.

10. Sub-section (2) of Section 156 provides that no proceeding of a police officer in any such case as is referred to in Sub-section (1) shall at any stage be called in question on the ground that the case was one which such officer was not empowered under that section to investigate. This sub-section is, in our opinion, in terms wide enough to cover an investigation into an offence punishable u/s 161 or Section 165, Penal Code, which is conducted by a police officer not so authorised by the proviso to Section 3, Prevention of Corruption Act. This also is the view tentatively expressed by the Bombay High Court in Rustom Ardeshir v. Emperor AIR 1948 Bom. 163 : 49 Cri. L. J. 196). In Queen-Empress v. Mehri 1895 A. W. N 9, a case u/s 561, Penal Code, it was contended that a contravention of Sub-section (2) of that section was a material irregularity affecting the merits of the case. That view was not accepted by the Court, but the case is of little assistance as no reference appears to have been made in the judgment either to Section 156 or Section 537, Criminal P. C.

11. It is, in our opinion, difficult to see how an investigation conducted by a police-officer of lower rank than that specified in the section can prejudice the accused. The adequacy of the investigation will be reflected in the evidence given for the prosecution at the trial, and it is by that evidence that the case against the accused will be measured. As was pointed out by Fawcett J. in Emperor v. Shivbhat 52 Bom. 238 : AIR (15) 1928 Bom. 162:29 CrIL. J. 551:

"...the main thing to bear in mind is that a conviction or acquittal does not depend upon the question what particular officer actually conducts the investigation which results in his trial. That is determined mainly by the evidence that is given at the trial and considered ; and the question whether that evidence has, in the first place, been elicited by an Inspector or by a Sub-Inspector is of very minor importance and does not really affect the result of a trial, except to this extent that the theory is that the higher the rank of the police officer investigating, the more careful and unimpeachable his inquiry is likely to be."

That was a case in which the investigation into a railway accident had not been conducted by an officer of the rank required by the rules made under the Railways Act, but the decision --that this was an irregularity of the kind contemplated by Section 537, Criminal P. C.,--is also not of assistance in the present case as the rules contained no provision corresponding to Sub-section (2) of Section 156 of the Code.

12. In our opinion failure to comply with the proviso to Section 3, Prevention of Corruption Act, is an irregularity which falls within the ambit of Sub-section (2) of Section 156 of the Code, and accordingly the proceedings of the investigating officer cannot be called in question.

13. The second question concerns the meaning of the word "gratification" in Section 4 of the Act. It has been argued that before the presumption referred to in that section can arise it is necessary (when the allegation is that the gratification has been accepted) for the prosecution to prove not only the acceptance of the thing, tangible or intangible, constituting the gratification but also that such thing was accepted as a reward or recompense; and reliance was placed on that definition of ''gratification'' in Webster''s Dictionary as a ''reward, recompense or gratuity.''

14. We have no doubt that this contention is not well founded. It is difficult to understand how the prosecution could ever prove, for example, that the acceptance of a sum of money was a "reward" without further proving the service or act which was the motive or consideration for such reward ; and in that case there is no presumption left to be drawn. It is true that gratification may mean a reward or recompense, but that is only one of its meaning The primary meaning of the word, as defined both in Murray''s Dictionary and in Webster''s Dictionary, is the giving of pleasure or satisfaction, and we are clearly of opinion that it is as satisfaction that the word is used in this section. That this is so is, in our opinion, made clear when the section is read as a whole, for it is not only the acceptance of a "gratification"

which may give rise to the presumption referred to therein but also the acceptance of "any valuable thing." It is indeed a little difficult to understand what it is which can be so defined which is not included in the general term "gratification," but be that as it may, in the case of a valuable thing the presumption arises, if it arises at all, as soon as the prosecution proves the acceptance by the accused person (in the circumstances referred to in the section) of that thing. We cannot think that it was the intention of the legislature that the initial burden of proof imposed upon the prosecution be higher in the one case than in the other.

15. In our opinion the presumption referred to in Section 4 arises as soon as the prosecution has proved that the accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person any gratification in the sense in which we have defined it in this judgment, or any valuable thing, from any person provided (however illogical it may be) that in the former case it has further proved that such gratification was not accepted or obtained, or agreed to be accepted or attempted to be obtained, by way of legal remuneration.

16. The third question concerns the right of a person accused of an offence punishable u/s 161 or Section 165, Penal Code, to give evidence on his own behalf. That right is given to him by Section 7, Prevention of Corruption Act, and we regard it of the highest value to an innocent person. The broad effect of Section 4 of the Act is to make every receipt by a public servant of anything of value to him a matter which at some later date he may be called upon to explain and justify. It is a provision which if unwisely used may be the cause of much hardship; and as the circumstances of particular recepits will, in many instances, be peculiarly within the personal knowledge of the recipient it is evident that the right now accorded to him to go into the witness-box and state on oath what those circumstances are is one which the Court must be zealous to safeguard.

17. As is well known the Criminal Evidence Act 18913 61 and 62 Vict. c. 36) made every person charged in England with a criminal offence, a competent witness for the defence at every stage of the case, and in R. v. Villars (1927) 20 Cr. App. 150, the Court of Criminal Appeal held that the failure of the trial Court to afford an undefended prisoner, the opportunity of giving evidence vitiated the trial.

18. In our opinion the failure of a Court to inform an accused person charged with an offence punishable u/s 161 or Section 165, Penal Code, of his right to give evidence on oath in disproof of the charge is a grave irregularity the effect of which must depend upon whether, in the opinion of the appellate Court, it has in fact occasioned a failure of justice. If it has the trial is bad, and the Court will consider whether the circumstances are such that a retrial should be ordered if the Court is satisfied that there has been no failure of justice the conviction will not, on account of this irregularity, be set aside.